



## HUMAN RIGHTS COMMISSION

**Respondent.**

**CHARGE NO. 2000CF0004**  
**ALS NO. 11425**

## RECOMMENDED ORDER AND DECISION

This matter comes before this tribunal on Respondent's *Motion to Dismiss* the *Complaint of Civil Rights Violation*, pursuant to 56 Ill. Admin. Code §5300.640 and §5300.730. Complainant has not filed a response to Respondent's motion. The matter is now ripe for decision.

## FINDINGS OF FACT

1. On November 21<sup>st</sup>, 2000, a *Complaint of Civil Rights Violation* was filed by the Illinois Department of Human Rights on behalf of Complainant Vinson.
2. On December 29<sup>th</sup>, 2000, Respondent InterAccess Co. filed a *Motion to Dismiss the Complaint of Civil Rights Violation* for failure to state a cause of action. On May 17, 2001, Complainant filed a response to Respondent's Motion to Dismiss and on June 7<sup>th</sup>, 2001 Respondent filed a reply.
3. In an order entered on April 22, 2002, former Administrative Law Judge William H. Hall denied Respondent's Motion to Dismiss.

4. Pursuant to an order entered on May 21<sup>st</sup>, 2002, Respondent filed a *Response to the Complaint of Civil Rights Violation* on June 21<sup>st</sup>, 2002,
5. On May 16, 2003, Respondent's counsel provided notice to Complainant Vinson's counsel of Respondent's bankruptcy proceedings.
6. On May 20<sup>th</sup>, 2003, this matter was *stayed* by Judge Hall pursuant to §362(a) of the United States Bankruptcy Code.
7. Despite being notified of a claims bar date of November 26<sup>th</sup>, 2003 in the United States Bankruptcy Court, Southern District of New York, Complainant failed to file a *proof of claim* with the bankruptcy court with regard to the claims advanced in the *Complaint of Civil Rights Violation*.
8. The claims bar date provided that any persons or entities that had claims against the debtor Respondent which arose prior to May 14<sup>th</sup>, 2003 were required to file a proof of claim on or before November 26, 2003 in order to be eligible to share in distributions from the Respondent debtor's estate.
9. On June 15<sup>th</sup>, 2004 an order was entered granting Respondent leave to file a motion to dismiss for failure to file a proof of claim with the United States Bankruptcy Court. Respondent was granted until June 30<sup>th</sup>, 2004 to file its motion to dismiss. Complainant was ordered to file a response thereto on or before July 8, 2004.
10. On June 16, 2004, Respondent filed proof of service of the June 15<sup>th</sup>, 2004 order with the Commission.
11. On June 30<sup>th</sup>, 2004, Respondent filed its motion to dismiss.
12. As of the date of this Recommended Order and Decision, Complainant has not filed a response to Respondent's motion to dismiss.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of the *Complaint of Civil Rights Violation*, ALS No. 11425, and the parties to this action.
2. Under controlling bankruptcy law, a party with a disputed claim against a bankruptcy debtor who has notice of a pending bankruptcy but fails to file a proof of claim before the claims bar date is bound by the bar date. 11 U.S.C. §1111(a) and Federal Rule of Bankruptcy Procedure 3003(c)(2). That party is not considered to be a creditor for purposes of distribution of the bankruptcy estate.
3. This tribunal is under no obligation or duty to search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the opposing party cannot tell this tribunal why the motion should not be granted, the motion may be granted.

### DISCUSSION

On May 16, 2003, Complainant's counsel was notified in writing of Respondent's filing of a bankruptcy petition. *Respondent's Exhibit A*. Pursuant to relevant bankruptcy law, an automatic stay was imposed on all pending proceedings involving Respondent, including this matter before the Human Rights Commission. In accordance with that rule, former Administrative Law Judge William H. Hall entered an order on May 20, 2003 staying this matter and continuing it for updates on the status of the bankruptcy proceedings.

On September 30, 2003, the United States Bankruptcy Court for the Southern District of New York provided a *Notice of Bar Date Requiring Filing of Proofs of Claim On or Before November 26, 2003*. *Respondent's Exhibit B*. That notice provided that any creditor, such as Complainant, who failed to file a proof of claim on or before the bar date of November 26, 2003, for any claim such

creditor held that arose prior to May 14, 2003, would be forever barred from asserting such a claim against the Respondent debtor. *Respondent's Exhibit B*. The *Complaint of Civil Rights Violation* in this case was filed with the Commission on November 21, 2000. Thus, the alleged civil rights violation in this matter occurred prior to the May 14<sup>th</sup>, 2003 date.

For reasons unknown to this tribunal, Complainant has made the choice to not respond to Respondent's motion to dismiss. Upon review of the record, it is clear that Complainant's counsel was properly served with the motion on June 30, 2004. Complainant's counsel was also properly served with the order of June 15, 2004, which provided a briefing schedule for the motion and the response thereto. In *Jones and Burlington Northern Railroad*, 25 Ill. HRC Rep. 101, 102 (1986), the Commission held that it "*will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion.*" Complainant has provided this tribunal with nothing to dispute Respondent's motion to dismiss for failure to file proof of claim with the United States Bankruptcy Court. Therefore, this tribunal will assume that Complainant's claims, as found in the *Complaint of Civil Rights Violation*, have been discharged by the United States Bankruptcy Court.

#### RECOMMENDATION

Based on the foregoing, I recommend that Respondent's motion to dismiss be granted and that the instant complaint, ALS No. 11425, along with the underlying charge of discrimination, Charge No. 2000CF0004, be dismissed with prejudice.

**ENTERED: May 9<sup>th</sup>, 2005**

**HUMAN RIGHTS COMMISSION**

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**MARIETTE LINDT  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION**